Application Number 10/691,917
Amendment in response to Final Office Action mailed December 28, 2007

REMARKS

This Amendment is responsive to the Final Office Action dated December 28, 2007. Applicant has amended claims 1, 19, 38, 55 and 56. Claims 1, 5-19, 23-38 and 42-56 remain pending.

Interview Summary

Applicant's representative (the undersigned) initiated a telephonic interview of Examiner Kahelin on February 19, 2008. Applicant appreciates the Examiner granting the interview, and taking time to discuss the application with Applicant's representative.

Applicant's representative and the Examiner discussed the Final Office Action and, particularly, the Response to Arguments section of the Final Office Action, independent claim 1, and US 6,381,496 to Meadows et al. (hereinafter "Meadows"). No exhibits were presented. Different potential amendments to claim 1 to overcome the present rejection based on Meadows were discussed. The Examiner suggested amending the independent claims in a manner substantially similar to the amendments set forth above. Applicant's representative and the Examiner did not reach an agreement regarding the allowability of the claims. However, the Examiner indicated that the proposed amendments would likely overcome the present rejections based on Meadows.

Claim Rejection Under 35 U.S.C. §§ 102 and 103

The Final Office Action maintained the rejection of claims 1, 6, 8-13, 19, 23, 27-30, 35, 36, 38, 43-46, 50, 52 and 54-56 under 35 U.S.C. § 102(b) as being anticipated by Meadows, and the rejection of claims 5, 7, 14-18, 24-26, 31-34, 37, 42, 47-49, 51, and 53 under 35 U.S.C. § 103(a) as being unpatentable over Meadows in view of knowledge known in the art. Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. Meadows fails to disclose each and every feature of the claimed invention, as required by section 102(b). Furthermore, there is no teaching in Meadows or elsewhere in the prior art that would have made it obvious to a person of ordinary skill to modify Meadows to include such features, as required by section 103(a).

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The non-final Office Action dated July 7, 2007 asserted that Meadows teaches "defining an event based on the sensor output," at col. 17, line 66, as was required by the independent claims then presented. In response to the non-final rejection of July 7, 2007, Applicant amended the independent claims to require "defining an event based on the monitoring of the sensor output," for purposes of clarification. Applicant submitted that definition of sensor events in Meadows is limited to user programming, i.e., prescription, which does not involve monitoring the sensor output. Accordingly, Applicant submitted that the teachings in Meadows with respect to defining a sensor event were contrary to "defining an event based on the monitoring of the sensor output," as required by Applicant's then presented claims.

The Final Office Action indicated that Applicant's arguments were non-persuasive. The Final Office Action interpreted "defining an event based on the monitoring of the sensor output" as being broad enough to include recognizing an event that was previously-defined by user programming based on that current monitoring of the sensor output. In particular, the Final Office Action stated:

> When Meadows' invention determines, e.g., that a person is horizontal, it defines an event (that the patient is horizontal) based on the monitoring of the sensor output (the position sensor). In other words, Meadows' invention may or may not "define," in the first (ex ante) sense; as in deriving a definition of a certain *type of events* (i.e., "if the sensor reads X, then the device will hereafter assert, or define, that the patient is horizontal"). But Meadow's invention does 'define' an individual event in a second (ex post) sense; as in recognizing a specific event as being one of a certain type of event (i.e. "since the sensor reads X, the device will define this particular event as the patient being horizontal").[1]

Applicant disagrees with this interpretation of the term "defining an event based on the monitoring of the sensor output." However, in order to advance the prosecution of this Application, Applicant interviewed the Examiner, as discussed above. As discussed above, Applicant has amended the independent claims substantially as proposed by the Examiner during the telephonic interview.

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[1] Office Action of December 28, 2007, page 5

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For example, as amended, independent claim 1 recites, "initially defining an event based on the monitoring of the sensor output, wherein initially defining the event comprises storing an indication of the monitored sensor output within a memory as the defined event." Independent claims 19, 38, and 56 have been amended to recite similar limitations. Claim 55 depends from independent claim 1, and has also been amended in a manner consistent with the amendment to claim 1. Meadows fails to teach or suggest these requirements of Applicant's claims as amended.

According to Meadows, a sensor is configured to sense an event[2]. As soon as the event is detected by the sensor, a microcontroller responds by directing the memory access control circuit to retrieve the appropriate OPS (operational parameter set) from the memory table and load it into the control register[3]. Meadows teaches that events, e.g., threshold sensor values, are "prescribed," i.e., programmed by a physician.[4] A user, i.e., and physician or patient, is allowed to program an OPS.[5]

In other words, the Meadows system is pre-programmed to recognize certain events, and deliver therapy according to an operational parameter set (OPS) that was programmed for the event. This teaching of Meadows is contrary to the requirements of Applicant's claims as amended. Applicant's amended claims require that the event be <u>initially</u> defined based on the monitored sensor output, and that the initial definition includes <u>storing an indication of the sensor output as the event within a memory</u>.

Meadows fails to teach each and every element of independent claims 1, 19, 38, and 56 and, as such, fails to make a prima facie case for rejection under section 102(b). Applicant respectfully requests withdrawal of the rejection for claims 1, 19, 38, and 56. Applicant respectfully requests withdrawal of the rejections for dependent claims 5-18, 23-37 and 42-55 in so far as they are dependent upon allowable independent claims.

Furthermore, Applicant does not acquiesce in any of the assertions that the features recited by claims 5, 7, 14-18, 24-26, 31-34, 37, 42, 47-49, 51, and 53 were well known at the

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[2] Meadows, col. 17, lines 61-62
[3] Meadows, col. 18, lines 8-12
[4] Meadows, col. 3, lines 29-35 and col. 17, line 57 – col. 18, line 8.
[5] Meadows, col. 4, lines 16-18

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time of Applicant's invention. For example, Applicant does not agree that it was well known to define an event by recording the output of a sensor over time, as recited by claims 7, 26 and 42, at the time of Applicant's invention. As other examples, Applicant does not agree that it was well known to present a defined event to a clinician as diagnostic data or as a marker in a histogram, or to receive a command from a user to enter a learning mode, as recited by claims 16-18, 32, 33, 37, 48, 49, 51 and 53. Moreover, even if such features were well known, Applicant respectfully suggests that it would not have been obvious to a person of ordinary skill in the art at the time of Applicant's invention to modify the Meadows system to incorporate such features for the vague and general reasons stated in the Office Action.

Applicant respectfully requests that any subsequent Office Action include a citation to a teaching of these features in the prior art and a detailed explanation of the reasons a person of ordinary skill in the art would have considered it obvious to incorporate such features into the Meadows system, or withdrawal of these rejections.
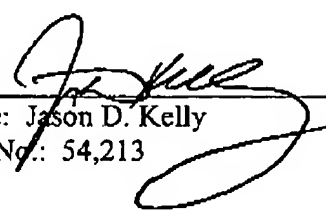
CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date:

2-27-08

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